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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-927

RALPH TROPIANO,
PETITIONER,

v.

ROBERT I. MOSELEY,
Warden of Federal Penitentiary
at Leavenworth, Kansas,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The Petitioner, Ralph Tropiano, respectfully prays that a writ of certiorari issue to review the judgment, without opinion, of the United States Court of Appeals for the Second Circuit entered in this proceeding on November 11, 1971.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 11, 1971. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

Questions Presented

1. Does the following charge constitute a comment upon a Defendant's election not to testify:

> "The doctrine of presumption of innocence, in a few words, is that the accused is presumed to be innocent unless and until his guilt is established and proven. That is, at the time this trial started, the accused, Ralph Tropiano, appeared before you with a clean slate. Nothing which you may have known or surmised about him, if there was any such, may be considered by you in arriving at your verdict. The fact, for instance, that the State's Attorney has decided to press a charge against an accused person should not weigh at all as against that accused, in the minds of you, the jury, in passing on the question of his guilt or innocence. In short, so far as you are concerned, this accused is innocent of the crime charged unless and until the evidence produced before you here in court satisfies you of his guilt.
>
> "From the fact that a man is presumed to be innocent, the next principle follows; namely, that the burden of proof is upon the State throughout the trial to prove an accused guilty and an accused does not have to prove his innocence. That is to say, it is incumbent upon the State to carry the burden of proving its case in all its essential elements before a verdict of guilty may be rendered. Mr. Ralph Tropiano was under no obligation to go forward with witnesses to defend himself or take the stand. No presumption, no inference of any kind should be drawn against him because he hasn't undertaken to testify or because he has not called witnesses in his behalf.
>
> "The accused had the right to testify if he so elects.

He has the right to call witnesses and explained [sic] the case from his standpoint, but no inference of guilt should be drawn against him for the reason alone that he does not elect to exercise either of those rights; because, as I have said, he is presumed to be innocent and the State has upon it impressed by law the burden of overcoming that presumption and establishing beyond a reasonable doubt every essential element of the crime charged. And, until that is established by evidence beyond a reasonable doubt, the presumption of innocence is not overcome."

2. Does the admission into evidence of a telephone conversation reflecting declarations of a police officer made to a co-conspirator outside the presence of a defendant constitute a denial of due process.

Statutory Provisions Involved

UNITED STATES CODE TITLE 18.

§ 1404. *Motion to suppress—appeal by the United States*

In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion for the return of seized property and to suppress evidence made before the trial of a person charged with a violation of —

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec, 174), or

(3) the act of July 11, 1941, as amended (21 U.S.C., sec. 184a).

This section shall not apply with respect to any such motion unless the United States attorney shall certify, to the judge granting such motion, that the appeal is not taken for purposes of delay. Any appeal under this section shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted. Added July 18, 1956, c. 629, Title II, § 201, 70 Stat. 573.

UNITED STATES CODE TITLE 18

§ 1951. *Interference with commerce by threats or violence*

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section —

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family of of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of

property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

Statement of the Case

Petitioner is presently a federal prisoner in the Federal Penitentiary, at Leavenworth, Kansas, having been convicted and sentenced for violating and conspiring to violate the Hobbs Act, 18 U.S.C. §1951 (interference with commerce by threats or violence.) A writ of habeas corpus was originally brought in the District of Kansas and was transferred to the court below pursuant to 28 U.S.C. §1404(a). The Petitioner is not challenging his present federal sentence, but contends that constitutional errors were committed in a prior state conviction upon which he is required to serve 3 to 6 years, commencing upon his relief from federal custody. Petitioner submits that these circumstances justify federal jurisdiction under the pending sentence doctrine of *Peyton* v. *Rowe*, 391 U.S. 55 (1968).

Petitioner contends that the following errors occurred in his state court trial:

1. Certain tape recorded evidence of a conversation

between a police officer and a co-conspirator was improperly admitted into evidence;

2. The jury failed to adhere to the rule of *Griffin* v. *California*, 380 U.S. 609 (1965).

By ruling dated July 14, 1971 and judgment dated July 23, 1971 the United States District Court for the District of Connecticut dismissed Petitioner's Petition for Writ of Habeas Corpus. Said ruling and judgment are reflected in the Appendix hereto annexed at pages 69-73. On July 26, 1971 a Certificate of Probable Cause was issued in accordance with which this appeal was effectuated. Said Certificate is also reflected in the Appendix hereto on Page .

On November 11, 1971 the Court Below, without opinion, affirmed the judgment of the District Court.

Reasons for Granting the Writ

I. The Trial Court's Charge Did Constitute a Comment upon Petitioner's Election Not to Testify.

The charge complained of is contained verbatim as "Questions Presented" numbered 1 appearing on page 2.

Appellant had requested the court to charge as follows, which request was denied:

"The defendant is not required to testify on his own behalf. The law gives him the right not to testify. Here the defendant, Ralph Tropiano, exercised his right not to testify. I instruct you that you must not consider the defendant's exercise of his right not to testify as evidence of guilt. You may draw no inference of any kind against the defendant because he did not testify."

The appellant respectfully refers this Honorable Court's attention to the following specific language of the given charge, upon which his claim of constitutional violation is predicated:

a) The jury was instructed that the Appellant had the right to testify, but in that he had the right *not* to testify. The prior statement that Appellant was "under no obligation to testify" does not, it is respectfully submitted, cure this defect for not being obliged to testify is clearly distinguishable from having the right not to so do. The former requires the conclusion that Appellant was not required to testify if he did not wish to, wherein the latter emphasizes his irrevocable right not to take the stand. The former is negative, the latter is positive.

b) The jury was instructed that no inference of any kind should be drawn against the Appellant because "he hasn't *undertaken* to testify" (emphasis supplied). Again, the failure to "undertake" to testify in his own behalf does not, it is respectfully submitted, adequately emphasize to the jury the Appellant's *right* not to testify. Once more, the negative aspect of Appellant's election was emphasized (I don't want to testify) as distinguished from his positive exercise of his constitutional right not to so do.

c) The jury was initially instructed that the state bore the burden of proof throughout the trial to prove the Appellant guilty. They were then instructed not to draw any inference of guilt "for the reason alone" that Appellant does not elect to testify "because . . . he is presumed to be innocent and the state has the burden of overcoming that presumption beyond a reasonable doubt." The jury was not told that they could infer no guilt from Appellant's election not to testify because he was exercising an irrevocable right not so to do. In substance, therefore, the jury was told, "Don't hold it against the Appellant that he does not take the stand because he is presumed to be innocent." It invites the conclusion that once this presumption of innocence should disappear in the minds of any juror he then would be entitled to consider the Appellant's election not to testify in his deliberation of guilt.

d) The words "for the reason alone" infer that the Appellant's election not to testify can be considered against him along with any other evidentiary factors the jury deems appropriate for consideration.

Thus, the Appellant contends that the substance of the trial court's charge in effect advised the jury that the only reason they could not consider Appellant's election not to testify was because of the presumption of innocence rather than the right not to take the stand which it is respectfully submitted, constituted a comment by the trial court on Appellant's failure to testify, thereby effectuating reversible error. *Griffin* v. *California*, supra; *U.S.* v. *DeLaCruz Bellinger*, 422 F.2d 723.

II. The Admission into Evidence of a Telephone Conversation Reflecting Declarations of a Police Officer Made to a Co-Conspirator Outside the Presence of a Defendant Does Constitute a Denial of Due Process.

There were admitted into evidence against Appellant-tape recordings between a police officer, not a member of the alleged conspiracy and a co-defendant and alleged co-conspirator, one DiBella. Appellant was not present at the time these recordings were effectuated. The transcript of these recording are reflected verbatim in the Appendix hereto on Page

An examination of this transcript reveals that the police officer had intentionally drawn from DiBella various derogatory statements regarding Appellant and that his purpose in so doing was to involve Appellant in the alleged conspiracy.

In its charge, the trial court correctly defined "conspiracy" and identified the alleged co-conspirators. Thereupon, the following charge was given:

"The declarations of a conspirator are admissible and are to be considered by you against a co-conspirator only if there is independent evidence of the existence of a conspiracy, and if the declaration is in furtherance of the conspiracy. However, when and if the State proves that he has become a member of the conspiracy, such declarations and acts of other conspirators or the commission of overt acts by other co-conspirators are his responsibility. But, he first has to be connected by the evidence to the conspiracy."

No portion of the charge made specific reference to the tape recordings.

The Connecticut Supreme Court justified the admission of this evidence on the ground that the statements of the police officer were admissible for the limited purpose of giving meaning and coherence to the statements of co-conspirator DiBella. That court stated, "Although Reynolds' part in the conversations was not admissible to prove the truth of any assertions made by him since he admittedly was not a co-conspirator nevertheless his portion of the conversation was admissible for the limited purpose of giving meaning and coherence to DiBella's statement."

The co-conspirator exception to the hearsay ruling does not allow the introduction of words or deeds of a government agent to an alleged co-conspirator out of the presence of the defendant. *U.S.* v. *Morello*, 250 F.2d 631 (2nd Cir., 1957); *Kramer* v. *U.S.*, 317 F.2d 114 (D.C. 1963). A defendant's connection with a conspiracy may not be established by extra-judicial statements of an alleged co-conspirator made out of the presence of the defendant. *Taylor* v. *U.S.*, 260 F.2d 737 (D.C. 1959); *Rodriguez* v. *U.S.*, 373 F.2d 17 (1967).

The trial court in its charge to the jury named the alleged co-conspirators (making no reference to the police officer with whom DiBella had conversed) and instructed that once

the Appellant had been proved to be a member of the conspiracy by other evidence, then the declarations of a co-conspirator were admissible against him. THE JURY WAS NOT INSTRUCTED TO DISREGARD THE POLICE OFFICER'S INCRIMINATING STATEMENTS WITH REGARD TO APPELLANT. Moreover, the Connecticut Supreme Court justification for the admission of the police officer's statements (to give meaning to the words of DiBella) was at no time alluded to in the charge to the jury.

Thus, the trial court in its charge:

a. Named the alleged co-conspirators.

b. Instructed that only the acts and declarations of said co-conspirators in furtherance of the conspiracy could be used against the Appellant.

c. Did not specifically instruct the jury that the police officer was not an alleged co-conspirator.

d. Did not specifically instruct the jury that the statements of the police officer could not be used against the Appellant.

e. Did not instruct the jury that the statements of the police officer could be considered only for the limited purpose of giving meaning to the words of co-conspirator DiBella.

Appellant contends that in view of the specific instructions given and in view of the absence of instructions with regard to the limited purpose of receiving the police officer's statements into evidence that the jury could not be expected to deduct and discern this limitation upon which the admission of the transcripts was predicated and that said jury did in fact consider the statements of the police officer as substantial evidence against the Appellant. This, it is respectfully submitted, constituted a violation of due process and reversible error.

Conclusion

For these reasons a writ of certiorari should issue to review the judgment of the Second Circuit.

Respectfully submitted,

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APPENDIX

RALPH TROPIANO
v.
ROBERT I. MOSELEY, WARDEN
OF FEDERAL PENITENTIARY
LEAVENWORTH, KANSAS

1971

2/8 Certified Copy of Order of the United States District Court for the District of Kansas, transferring action to the United States District Court for the District of Connecticut; received and filed together with the following Papers:

(1) Petition for Writ of Habeas Corpus
(2) Memorandum and Order re verification of application
(3) Verified Petition for Writ of Habeas Corpus
(4) Verification of Petition for Writ of Habeas Corpus
(5) Memorandum and Order re issuance of Rule to Show Cause
(6) Rule to Show Cause
(7) Petitioner's Motion to Amend Petition for Writ of Habeas Corpus
(8) Order Granting Petitioner's Motion to Amend his Petition
(9) Respondent's Motion for Enlargement of Time to file Motions and Return
(10) Appearance of Jerrold H. Barnett for Respondent
(11) Order granting Attorney Jerrold H. Barnett permission to appear for respondent
(12) Order granting respondent's motion for

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enlargement of time to file motions and return

(13) Respondent's Motion for Change of Venue

(14) Respondent's Memorandum in Support of Motion for Change of Venue

(15) Memorandum and Order re memoranda and motion for an order transferring case to District of Connecticut

(16) Respondent's Supplemental Memorandum

(17) Copy of Docket Entries.

4/20 Respondent's Return together with Exhibits 1 thru 7, filed.

6/14 Hearing on Petition for a Writ of Habeas Corpus. "Over two weeks by agreement of counsel". Clarie, J. M-6/15/71.

6/28 Respondent's Memorandum, filed at Hartford.

" Hearing on Petition for a Writ of Habeas Corpus. Decision Reserved. Clarie, J. M-6/29/71.

7/15 Ruling on Petition for a Writ of Habeas Corpus, filed and entered. The application for a writ o habeas corpus is without merit and is therefore denied. So ORDERED. Clarie, J. M-7/15/71. Copies mailed to all counsel.

7/23 Notice of Appeal, filed by Plaintiff. Copies mailed to all counsel.

" Judgment entered in favor of respondent, dismissing the petition for a writ of habeas corpus. Earl; C. Copies mailed to all counsel.

7/27 Certificate of Probable Cause, entered. Clarie, J. M-7/27/71, Copies mailed to all counsel. Copy of Certificate, Notice of Appeal and Docket entries mailed to Clerk, U. S. Court of Appeals.

EXHIBIT Q
TRANSCRIPTION OF
TAPED TELEPHONE CONVERSATIONS
BETWEEN REYNOLDS AND DI BELLA
TAPE 1
(FEB. 10, 1964 AT 6:55 P.M.)

Francis: Hello.

Thomas: I just gotta go down there. They just gave me a call now —

Francis: Did you hear what happened down there?

Thomas: No, I don't know what happened.

Francis: Ah?

Thomas: I don't know what happened.

Francis: Yes.

Thomas: What'd they get?

Francis: I don't know — they got about twelve places, I guess. Did you talk to Tropiano today?

Thomas: No.

Francis: Well, they didn't hit him then, probably.

Thomas: I don't know, I didn't talk to him today, but I just got this call a few minutes ago.

Francis: Yes. Didn't they tell you?

Thomas: No, I didn't say anything. They wanted to see me down the highway now.

Francis: Cripes sakes. Well that's what we were telling you about.

Thomas: Yeh, I know it. I know it. I can't go with all this crap. I mean, I got — my job is for that other thing. Now, if these fellows don't keep their house in order that's not my fault. (Q-2)

Francis: Well, I mean, they can keep them in order if they want to do it the way we said before, you know?

Thomas: Yeh. Yeh.

See, I told them exactly — you know what I told them, I told them to move. They said "Why?" I said, "I don't

know why." I said, "When I used to get the orders to move, they gave me a hint, I changed everything around.

Francis: Yes. Yes.

Thomas: These fellows, they're negligent; they wait until the last minute. I mean, all I gotta do is have just one little hint. I don't care how big the man is or how small the man is. If a man told me, "Tont, that's enough," I'd move.

Francis: Yeh.

Well, do you think they're still gonna work with Steve or what?

Thomas: Oh, yeh, I think they will know because — I'll go down and find out what the story is and let you know. I don't know what it is. I'll find out. I'll go down there. That's what it must be, see — you hit them in the pocket book, and now everybody wakes up.

Francis: Oh, sure. Oh sure.

Thomas: I know, I know.

Francis: I just heard it on the radio, but I knew when it was coming. (Q-3)

Thomas: Twelve joints?

Francis: Yeh, around there.

Thomas: Yeh.

O.K.

Francis: O.K.?

Thomas: I'll let you know what happens.

Francis: When are you going to give me a buzz?

Thomas: Tomorrow night.

Francis: You're positive?

Thomas: Yeh. Yeh.

Francis: O.K., I'll sit tight then.

Thomas: Yeh. Right.

Francis: O.K.

Voice: The last message was recorded February 10th at 6:55 P.M.

(FEBRUARY 10, 1964 AT 8:30 P.M.)

Francis: Can I?

Thomas: Yeh.

Francis: Yeh. Can you?

Thomas: Yeh. Yeh, I'm in a pay station. Hold on a minute, Frank. Francis, you know what it was?

Francis: What happened?

Thomas: The guy that's gonna run the crap game they grabbed. (Q-4)

Francis: Who, Paul?

Thomas: Yeh.

Francis: No kidding.

Thomas: Yeh.

Francis: He's not the only one?

Thomas: He strands to blow his joint.

Francis: He's not the only one?

Thomas: No.

Francis: Huh?

Thomas: They don't care about anybody else.

Francis: Oh.

Thomas: But, here's the way it happened. Some guy came in —

Francis: Undercover?

Thomas: A copper, yes — the undercover guy came in and passed the bet to one of the cooks —

Francis: Yes.

Thomas: — and the next time they came in they wanted to give it to Paul and Paul says, "I don't take any bets around here," so they said they gave it to Soapy. So, he turned around and said to Soapy, "You know these fellows?" He says, "Yeh." He said, "They're all right." They gave him the bet, and Soapy is the one that took the bet and called it in.

Francis: Oh.

Thomas: Nothing — no papers, no slips or anything

that was handed between the undercover guy and (Q-5) Paul. Everything was by word of mouth. The undercover guy to Paul on one occasion, and he turned around and he told it to Soapy, and Soapy called up. Paul had nothing to do with it.

Now they gave him the warrant to bring him over on June 4th. Now, if this guy goes — they've got the table, they've got the place all set, Paul is set to go and he's all upset.

Francis: Well, do you think that Paulie would go, or do you think he'd just get fined?

Thomas: I don't follow you, Francis.

Francis: Well, in other words, are you afraid that he's going to go to jail or what?

Thomas: Well, I'm afraid he can't have anything like this happen. He's stands to get thrown out of his place, if the Liquor Commission finds out. It's a felony.

Francis: Cripe sakes. He should have known.

Thomas: Well —

Francis: Like you say, if there's already been a warrant —

Thomas: I mean, two guys for the same offense and they knock him out —

Francis: Well, he's got a lot of time yet, right? When is the court, two weeks, at least?

Thomas: Thursday to plea.

Francis: When? (Q-6)

Thomas: Thursday to plea.

Francis: Plea day would be Thursday —

Thomas: Yeh.

Francis: — right? He's gonna plead no guilty?

Thomas: Yeh.

Francis: Right?

Thomas: Yeh.

Francis: So that it would be at least two or three weeks before that, right?

Thomas: Yeh.

Francis: Well, he's got a lot of time, and I'd have to do some talking.

Thomas: You want me to do a little talking too?

Francis: Well, let me get—

Thomas: I think you're better off you doing it, Francis.

Francis: Well, I want to get the general feel first before we go, you know.

Thomas: Yeh. Because they're all set to go, they're gonna start Thursday.

Francis: Did you talk to Whitey yet?

Thomas: Whitey is still in bed. I met his men on the highway. He's still in bed; he's not feeling right.

Francis: You know the whole thing that's gonna make the difference here? (Q-7)

Thomas: What?

Francis: This kid still doesn't know whether you're putting him on.

Thomas: No.

Francis: This Whitey has gotta come up with the dough or he's not gonna play ball.

Thomas: Francis—

Francis: In other—

Thomas: — all you gotta do is gove the orders.

Francis: Huh?

Thomas: — what the orders were, the way the money's gonna go — what did Whitey tell you? You get the money?

Francis: No. He told me that the money will go from him to you to me to Steve.

Thomas: That's the way it's gonna go when he gives it. That's the way it goes.

Francis: But, when is he gonna give it? That's what —

Thomas: Money goes when these guys get started. Now,

this was — they were gonna start Thursday night. They got the spot — they were gonna tell me where the spot was tonight and then I was supposed to give you the name of the spot to give to —

Operator: It is now four minutes. Signal when you're through.

Thomas: I'll take care of it, operator. (Q-8)

Francis: Ah —

Thomas: Do a lot of talking. You can't get ahold of him tonight, huh?

Francis: No. It'd be better off if I called him during the day, then he gets it on his private phone.

Thomas: Yeh.

Francis: In other words, he doesn't like to talk in front of his wife.

Thomas: Yeh.

Francis: But, look, in other words, don't take a sweat on this about —

Thomas: No, no, no.

Francis: The whole bit here is he's got a lot of time. In other words, there's no rush —

Thomas: Yeh.

Francis: — that we gotta do it without thinking.

Thomas: And he's gonna plead not guilty, trial by jury, I figure. That's the best way, right?

Francis: Right. Right. In other words, then if something — we decide to change something in the interim, well, he can always change his mind there any time.

Thomas: If you pull this one, this is gonna make it awfully strong. You pull this one — it's very important. The whole thing hinges on this one.

Francis: Listen, I'm telling you the whole (Q-9) thing hings on the money. When the money —.

Thomas: Oh, the money. For Christ's sake, the money is the least thing. I can bring the money tomorrow.

Francis: Why don't you bring the money and show the kid?

Thomas: See.

Francis: At least — in other words, I haven't got anything to fall back on, Tom.

Thomas: All right, does he want a month's in advance?

Francis: He wants a month's in advance.

Thomas: All right. You'll have a month's in advance. In the meantime, you pull this one out of the hat. Make the other guy — make Soapy take the rap.

Francis: And don't forget —

Thomas: It's not fair to have two of them take it for one.

Francis: Don't forget pigeon here, too, in advance.

Thomas: Don't worry about you.

Francis: I'm worried about me.

Thomas: I'll take care of you. You got that four hundred, so you're in right off the bat. That goes the whole thing; it's two thousand dollars, right?

Francis: Right. Plus what's for me — you and I talked about.

Thomas: Yeh, on this end. (Q-10)

Francis: Right.

Thomas: That's right. We're not even moving yet, Francis. We've got a couple spots I want to talk to you about, that's why I wanted to sit down with you some night this week.

Francis: Yeh.

Thomas: Grab those four (inaudible.)

Now, does he want that money up before they move?

Francis: Well, I think it would give him a little bit of confidence.

Thomas: Would he feel better?

Francis: I know he will. That's what he's been harping at me at. I said, "Well, listen, the guy has been

talking," and I said, "but he's good for it." In other words, I told him you were good. You see, he doesn't know you, Tom.

Thomas: Yeh.

Francis: You understand?

Thomas: Yeh.

Francis: In other words, just like you really don't know him, really.

Thomas: Well, I'm not worried now. I'm not worried. If I sat down with (h)im I'd feel entirely different about the main.

Francis: Well, I think —

Thomas: All right, I'll get the (inaudible.) In the meantime — (Q-11)

Francis: You get that, I will talk to him, and can I — you see me tomorrow night?

Thomas: Yeh.

Francis: All right. Give me — well, I don't know how the hell I'm gonna do this, Tom. At least until — give me until six o'clock tomorrow night.

Thomas: All right.

Francis: And then —

Thomas: I'll be at my house at six o'clock tomorrow night waiting for a call.

Francis: At your house?

Thomas: Yeh.

Francis: All right.

Thomas: All right?

Francis: And I'll see what his feelings are; maybe he'll want to talk with you, then — like I say, it's up to him. I really don't know what the "poop" is yet.

Thomas: Yeh, yeh.

Francis: You just told me; that's all I heard.

Thomas: Yeh. The kid can't take that rap. If he takes that rap he blows that joint.

Francis: Yeh.

Thomas: Look, it's a felony, Francis.

Francis: Yeh, I know it.

Thomas: And it's bad. Now this is something he had started before; this is nothing — I was (Q-12) telling him about it. He's not to be (inaudible.) He said these kids — they were young Italian cops, they didn't know nothing about it. He never did business directly with them. It was the cook.

Francis: Yeh.

Thomas: Well —

Francis: In other words, there is somebody there — this Soapy can go the route?

Thomas: Oh, yes.

Francis: Let me talk to him.

Thomas: All right.

Francis: And then I'll explain it to you when I see you just what we think we should do.

Thomas: I'll be waiting for your call at my home.

Francis: O.K.?

Thomas: Yeh.

Francis: O.K.

Thomas: Goodnight, Francis.

Francis: Right.

Voice: This last recording was taken on February 10th at 8:30 P.M.

(FEBRUARY 11, 1964 AT 6:00 P.M.)

(Buzz.) (Buzz.) (Buzz.)

Thomas: Hello.

Francis: Hello. (Q-13)

Thomas: Yes.

Francis: Franny.

Thomas: Oh, yeh. Let me pick it up upstairs.

Francis: O.K.

(Pause.)

Thomas: Hi, Fran.
Francis: Hi, Tom.
Thomas: Good.
Francis: Time available tonight?
Thomas: Plenty of time.
Francis: Huh?
Thomas: Plenty.
Francis: Plenty of time?
Thomas: Yeh.
Francis: Where?
Thomas: Any place you say.
Francis: I don't care. Ollie's?
Thomas: Huh?
Francis: You ever go to that Ollie's?
Thomas: Ollie's?
Francis: Yeh. I never been there. I don't know.
Thomas: It's no good there.
Francis: Well, you name it.
Thomas: It's too obvious.
Francis: You name it.
Thomas: You gonna be alone?
Francis: Well, certainly. (Q-14)
Thomas: All right. Let's meet in our same spot. You leave your car there and we'll go in my car this time.
Francis: O.K.
Thomas: Same spot.
Francis: Not too long though.
Thomas: No.
Francis: Avon or something like that?
Thomas: Yeh.
Francis: All right.
You're talking about the phone booths?
Thomas: Yeh.
Francis: O.K. What time?
Thomas: Well, I just got home —

Francis: Me too.

Thomas: — and I'm not gonna get dressed because I —

Francis: That's all right. No, that's all right.

Thomas: — I got some company coming over tonight, and I want to help this guy across the street, the poor bastard. His washing machine went on the fritz and he can't afford a guy, so I told him I'd give him a hand tonight.

Francis: About seven o'clock? Seven thirty?

Thomas: Seven — quarter after seven — between quarter after seven and seven-thirty.

Francis: At the same place. (Q-15)

Thomas: Same spot.

Francis: O.K.

Thomas: Good boy.

Francis: O.K., Tom.

Thomas: By.

Francis: Right.

Voice: This last recording was made February 11th at 6. P.M.

(FEBRUARY 12, 1964 AT 9:45 A.M.)

Thomas: I thought you said you were gonna get up around quarter to nine, that's why I didn't bother you. It's quarter to ten, Frank?

Francis: Yeh.

Thomas: You know, do you suppose — now, this is — don't get excited about this. They want me to turn over the money, but they want — here's the only thing that they haven't got. They won't get nobody to come to the games on account of he has this thing over his head that long. To me — do you suppose he can knock it out entirely? He can't, huh, before then?

Francis: No.

Thomas: He can't?

Francis: They're asking for the moon.

Thomas: They can't do it, huh?

Francis: No.

Thomas: Well, here's what they told me. They told me they could pass the — they could pass one- (Q-16) half of the money over until after this thing goes, and they can't move until then. You know what I mean? To show that they're acting in good faith.

Francis: Well, like they said, this guy promised a month, and if this guy don't get a month he's through. I just know it.

Thomas: Yeh. See, how long do you think that they'll postpone that thing? Because this guy — you see, you follow me, Frank?

Francis: Oh, yeh, I can see.

Thomas: You follow my point? Because the guys he's gonna have coming in there, Frank, with this hanging over his head — I can see the point. When they brought it up I said, "Jesus, how the hell are you gonna do it? The only thing that you can do is you'll have to wait until after the thing gets started — after the case goes through. Now, how long these postponements are going to be I don't know." But, they were talking about — and it was a logical thing — in other words, if you got — I'm a businessman and I come over to your place to play, I want to rest assured that nothing gonna happen, no harm.

Francis: Yeh.

Thomas: And I think you would want your customers to feel it because you wouldn't be working — they wouldn't be happy with the situation.

Francis: Hey, listen, that wasn't even part of the bargain, Tom.

Thomas: Yeh, I know it. (Q-17)

Francis: And this kid's gonna tell 'em go jump in the river, I know.

Thomas: Yeh, yeh.

Yeh, that's right. I say the — I said the same thing.

Francis: If they don't want 'em let say so.

Thomas: Francis, where can I see you now, tonight?

Francis: Tonight?

Thomas: Yeh, about what time you want to see me?

Francis: Well, that's up to you.

Thomas: Yeh. Well, why don't I call you.

Francis: Because this is my day off.

Thomas: Oh, no, no. You probably want to go out, huh?

Francis: Yeh. You can call me, say, any time after three o'clock, I'll be home.

Thomas: All right. All right.

Francis: If they just put up half tell 'em to forget it.

Thomas: Yeh.

Francis: Because I know this kid. I'm not gonna argue with this kid.

Thomas: Yeh. Let me ask you something, Francis. You think you can get him on the phone today?

Francis: Me? (Q-18)

Thomas: Yeh.

Francis: I don't know — dangerous — I could try.

Thomas: Yeh.

Francis: I don't know.

Thomas: Ah —

Francis: Well, what do you want on the phone?

Thomas: Well —

Francis: What I just said?

Thomas: Yeh. Just exactly. See how long this thing — because they can't operate. That fellow can't be behind this stick with this thing over his head.

Francis: Sure he can.

Thomas: Huh?

Francis: I'm telling you now that it's taken care of.

Thomas: Yeh. Yeh, well, that's quite good. I wouldn't be afraid —

Francis: But, he's not going to make it obvious; that's the whole God damned thing in a nut shell.

Thomas: Yeh, hey.

Francis: And if you want to talk to the kid tomorrow night about it, then you can talk to him then about it.—

Thomas: Yeh.

Francis: — but I ain't — he won't even meet with you.

Thomas: Yeh, yeh, yeh. I know it. (Q-19)

Francis: But if they're just to put up half and fuck around with something like — it isn't even —

Thomas: — (Inaudible.)

Francis: He's gonna drop the whole fucking thing.

Thomas: Well, what I meant, Francis — this is the way they meant. They want — they're not gonna operate until Paulie's thing is done, because you can't have — in the event that something happens he'd have two charges over his head, you know what I mean; without one being taken care of he'd have another one over his head, because the gambling ain't too bad.

Francis: Yeh.

Thomas: That's the only thing that he's afraid — in the event that something should happen, instead of having one he'd have two.

Francis: Well, that's up to them. As I say, I told you the best way to do it, he doesn't have to worry, everything is gonna be fine, but —

Thomas: Well, how would you feel in his position? I mean, let me ask you that question?

Francis: If I got told what I just told you?

Thomas: Yeh.

Francis: I'd feel good.

Thomas: Me too.

Francis: I'd feel good. (Q-20)

Thomas: Me too.

All right, I'll call you Thursday night.

Francis: This guy could give you something probably more definite tomorrow night.

Thomas: Yeh, yeh, that's what I was figuring.

Francis: If they only come up with half he won't even see you. I'm telling you.

Thomas: Yeh.

Francis: Like I say, I've talked to him already.

Thomas: Yeh.

All right.

Francis? When —

Thomas: As far as I'm concerned, Francis, you see, there's a guy that's gonna go into a place. He gonna be going in there with a free mind.

Francis: They'll go in with a free mind.

Thomas: Huh?

Francis: They'll go in with a free mind.

Thomas: I would. I wouldn't be afraid of the deal.

Francis: They'll go in with a free mind.

Listen, they're just not sure that this kid's not going to do anything, and I'm telling you that the kid will do something.

Thomas: Yeh.

Francis: In fact, it's already been done. (Q-21)

Thomas? Oh, no, I don't mean that he would lie — he's not going to do anything as far as this case is concerned. I say, "Yes," I think they do go along with that too, but the only thing is that the customers — you see, customers have to feel free in their minds, that when they go there nothing is gonna happen. You want to see his bar last night. You want to see the difference in the bar. The place was empty.

Francis: Yeh.

Thomas: Oh, it was dead. There wasn't a soul in there. Even the policemen that used to come in there — routine —

lunch time — they didn't come in. It made a big, big difference.

Francis: Yeh.

Thomas: Well, I can understand. What the hell, it's only a temporary injection. I mean, that'll — it'll straighten itself out all right, but they were talking about the players. The players wouldn't be going in there with a free mind, and yet how the hell are you going to put it on the surface? You can't put it in the New Haven Herald and say, "Look, Paulie's job and all these responsibilities, he's O.K." You can't do that either.

Francis: Well, that I'm not worried about. If they don't want the game, they don't want anything, that's up to them. The whole bit here is that wasn't even involved in the bit.

Thomas: That's right. (Q-22)

Francis: — and when I go and tell this kid this he's gonna say, "Well, tell 'em to drop it — the whole thing."

Thomas: Yeh.

Francis: I mean, this kid's not playing for nothing.

Thomas: Yeh. Yeh, that's right. That's right.

Francis: Any way they want it. If they don't want 'em, say so, and he's out.

Thomas: Let me call you at three, Francis, all right? You'll be home right after three?

Francis: Well, yeh, I'll be home probably before three, but I'm just saying that to be safer.

Thomas: Around three?

Francis: Yeh.

Thomas: O.K., boy.

Francis: Good, Tom. I'm sure that's the way he's gonna feel.

Thomas: Well, that's the way I felt about it last night.

Francis: Maybe if they do come up with it, you see

him tomorrow night, maybe you can get something definite out of him, whether just throw it out or something else.

Thomas: Yeh.

Francis: I can't say it because he's got (Q-23) the contact there and he's close to it.

Thomas: Yeh, yeh, yeh.

Well, you know what I think personally? I think if the fucking dough had been up a week ago, I don't think the guy would have made the hit.

Francis: Oh, yeh, I think he would have had to.

Thomas: Yeh.

Francis: He'd have to.

Thomas: Forced to?

Francis: Sure these things have been in effect for a long time.

Thomas: Yeh, I know it, but I think he could have, proably worked something out —

Francis: Oh, well, sure. I mean, he could have lost a warrant, or said, "This one isn't too sure."

Thomas: Yeh, yeh. I think —

Francis: That's the best —

Thomas: Because I think the guy is that honorable.

Francis: That's what's gonna hurt him right now. They're dilly dallying around here about this money deal —

Thomas: No, they didn't discuss money. No, there was not discussions about the money. The money was perfect. Here's what — all they said was, "Look, as long as Paulie's case is being — have to wait until it's (Q-24) nolled — not nolled, but postponing it; let's give 'em half the money, we don't operate, and when the case is all finished then we come up with the other grand and they start business." You know what I mean, that's the way they want it. It wasn't that they were trying to cut you down and go into business. That isn't the point. They didn't want to operate.

Francis: Yeh.

Thomas: See what I mean?

Francis: What did he say he'd come up with?

Thomas: They want to come up with one-half of the money to show that they're acting in good faith. They don't operate until Paulie's case gets squared away, because they gotta get the people that are going to come to these cases free in their minds that nothing is gonna happen.

Francis: No, that's gonna cost him two grand or he's out.

Thomas: Yeh.

Francis: Like I say, this isn't me talking; that's him talking.

Thomas: Yeh, yeh.

Francis: Because, like I say, this kid just says, "Listen if they want it, they want it. If they don't tell 'em to forget it."

Thomas: Yeh, yeh.

Francis: So, it's up to them. Either (Q-25) they want the kid or they don't, and they gotta decide. This shouldn't even enter into it.

Thomas: That's right. That's exactly what I said. I said that the kid gave you the offers to go and you could go. So, I said to Paul, "Why do you have to be in there? Why do you have to be the sucker man?"

Francis: That's an answer too. They gotta make up their mind one way or the other.

Thomas: I said, "Why do you have to" —

Francis: They feel like talking and the kid's interested — I say if they don't come up with it let's forget about it.

Thomas: Because I can understand that the play is gone up there — the play is gone up there without a free mind — see, in Bridgeport they go in which a free mind. You don't have to worry — it's only twenty minutes away.

Francis: Yeh. Well, that's up to them. Listen, if they want him they got him. If they don't then tell 'em to forget it.

Thomas: Yeh. All right, Francis.

Francis: All right?

Thomas: Yeh.

Francis: Not half though.

Thomas: Oh, no, no. No. All right. That's all. You guys call the shots.

Francis: Not me. I'm not calling the shots. (Q-26)

Thomas: No. Yeh.

Francis: I haven't bothered you for my money.

Thomas: No, no.

Francis: All right. Like I say, this New Haven thing is something between Tropiano and—

Thomas: Who the hell was that kid—you know you were telling me about that kid over in that diner?

Francis: Kid over in the diner?

Thomas: You know the Puritan Maid, the one your kids was telling me about.

Francis: What about him?

Thomas: I was trying to figure out who the hell he is. Some guy picking up action in there?

Francis: Oh, you know there's somebody picking up action in there.

Thomas: No, I didn't. I don't hang around there, Frank.

Francis: Well, I'll talk about him later.

Thomas: O.K., boy.

Francis: Like I say, find out from these guys one way or the other.

Thomas: Oh, well, they want to go, Frank.

Francis: Well, it's up to them.

Thomas: They want to go, but they want to go with a free mind with the players. (Q27)

Francis: This New Haven is between Tropiano and Ahearn.

Thomas: Yeh.

Francis: Right?

Thomas: Yeh.

Francis: And if Tropiano wants him he's gotta come up with the dough irregardless of this last pinch to Paulie.

Thomas: Yeh.

Francis: And, on top of that, Ahearn is talking about helping Paulie out of this one too.

Thomas: Yeh. Yeh.

Francis: So if he hasn't got enough faith in him now tell him to forget it.

Thomas: Well, I have faith in him.

Francis: Well, I mean —

Thomas: "Would you go along?" And, I said, "Yes, I would go along — I would be there frequently but I wouldn't be there as a stick man."

Francis: Well, this Tropiano is pulling Ahearn's leg if you're asking me.

Thomas: I don't think so.

Francis: Well, he's gotta prove it.

Thomas: Yeh.

Francis: You know?

Thomas: Yeh. No, he's not a — gee, they were telling me — (Laughter) — that Joe Licardi bit one of the cop's fingers or something. (Q-28)

Francis: Well, that's — see, that's the guy that I heard they grabbed his nose to have him spit out the action.

Thomas: Yeh.

Francis: So, he probably did bite the cop's finger, I don't know.

Thomas: (Laughter) — telling me about it.

Francis: But, Tom, listen, if Tropiano wants to go with Ahearn tell him to come up with the money one month

and in advance, and if he doesn't want it tell to forget it.

Thomas: O.K.

Francis: I mean, you can't be any plainer than that.

Thomas: Oh, no, no, no, no. But the money part of it wasn't the issue.

Francis: Well, what do you mean — wants to give the kid half? He's acting like a baby for cripe sakes.

Thomas: Yeh. He wanted to give him half so that he would operate until the thing was clear.

Francis: He's talking like a baby.

Thomas: Yeh, yeh.

O.K. Frank.

Francis: All right?

You're gonna give me a buzz though for sure — (Q-29)

Thomas: Oh, definitely: Definitely.

Francis: O.K.

Thomas: All right.

Francis: But, you tell him that.

Thomas: All right, boy.

Francis: O.K.?

Thomas: Yeh.

Francis: Right, Tom.

Voice: This last recording was taken February 12th at 9:45 A.M. in the morning.

(February 12, 1964 at 1:30 P.M.)

Thomas: I got hold of one. I couldn't get hold of the other. Tell you what I gonna do. I'm gonna take it on myself — I'm gonna put the money up myself, then we'll talk.

Francis: Well, like I say, it's not me; it's him.

Thomas: (Inaudible)

Francis: If they want him —

Thomas: (Inaudible)

Francis: I don't know what the hell you're doing it for.

Thomas: Well, I know it. I know it. The whole thing —

you know what could happen? I was just discussing this with Freddie. Freddie and I are very close.

Francis: Yeh. Amaio, you mean? (Q-30)

Thomas: The thing could — that's why, like I said I'm gonna put it up and I'm going to — I did get from him, like I said before — I called him up this morning, and he said, "Look" — first, I told him I suggested the one half of it, but then let me put the whole fucking thing up, then on this one I'm gonna do this. Then I want Mr. Ahern to go through with his part of the bargain the way he did about the pinch, so that there won't be nothing going on — no operation going on until Paul is cleared. And after Paul is cleared I will divorce myself completely from him.

Francis: Yeh, well, that's good. I don't know what the hell you're going it for him anyway.

Thomas: Now, you follow me?

Francis: Yeh.

Thomas: Now, will he give me the same consideration with another outfit?

Francis: What do you mean?

Thomas: Somebody else, take Paul out of the picture?

Francis: Oh, yeh. I mean, you gotta talk that with him See, I can't talk for him, Tom.

Thomas: No. Well, can I bring that up tomorrow.

Francis: Certainly. You can bring up anything you want.

Thomas: All right. (Inaudible) Where can we meet tomorrow? What time do you want to go? That's (Q-31) why I'm calling you now a little early.

Francis: You're not gonna see me tonight?

Thomas: Well, I don't think it's important tonight. I think tomorrow's the day when we get the money, and we'll all go together. That's what you want, right?

Francis: I was gonna get him the money before I saw you and him together.

Thomas: Oh, oh, oh. Well, the banks are closed today. I called up the banks about fifteen minutes ago. I was gonna get that part of it. I was gonna get that. I forgot about that, really. But the first thing in the morning I can do it.

Francis: Yeh, but then I'm unavailable; I gotta work tomorrow.

Thomas: Oh, I see.

Francis: This is gonna blow the whole deal. I gotta — I can't take off tomorrow. I can't make it looks as if —

Thomas: Oh, you were gonna sneak down there today?

Frank: Well, I'm not gonna say that we were gonna get it to him.

Thomas: Yeh, I know; that's your business.

Well, why don't we do this, Frank? Some way tomorrow — is there some way that probably he could meet you part of the way? Maybe you could sneak away from your partner tomorrow? (Q-32)

Francis: Then we're starting to take the chances, and you know this is foolish. We don't have to. Do you understand?

Thomas: Yeh.

Francis: Why do something foolish when it's unnecessary.

Thomas: Well, I just got through about fifteen minutes ago — I'm right on the highway.

Francis: Yeh.

Thomas: I just got through calling the bank to get the package ready for me, and the Goddam(n) — I could — it ring, and it ring, and ringing and ringing and finally I dropped the coin in — did you know the banks were closed today?

Francis: No, I didn't even think of it, to tell you the truth.

Thomas: I never believed this — I didn't — I couldn't figure out on account of Ash Wednesday. Yeh. And I only

got probably six, seven or eight hundred — a thousand tops around the house. Then I'd have it get it broke up in bills.

Francis: Why can't this guy be — in New Haven put up the grand — the other grand?

Thomas: Ah —

Francis: The guy that's going to put up the other grand.

Thomas: Then I'd have to go all the way (Q-33) down to New Haven. I'm fucking sick and tired of going back and forth, back and forth.

Well, you're gonna be home for a while. I'll call you again in about a half an hour. Let me see if I can pick up another "G" note somewhere from somebody.

Francis: O.K.

Thomas: All right.

Francis: I've already — listen —

Thomas: Yeh.

Francis: — I've already talked to the kid.

Thomas: Yeh.

Francis: He's in good spirits, this kid. And I told him maybe tomorrow night. Now, you say you would like to. Like I said, this business about this other stuff, I don't know what you're talking about. You just talk him and lay it on the line.

Thomas: Well, yeh, that's what I mean. I mean, we'll come up with the money, Frank.

Francis: That's right.

Thomas: Now, we don't operate, and he'll have to give us — you know, give us credit. I mean he can't get — use the money that we give him now for a month because we're not operating, right?

Francis: That's right. Well, you talk to him — that deal over with him. He'll play ball with you.

Thomas: I know he will. (Q-34)

Francis: As long as they — as long as he's sure they're playing ball with him and they're not gonna screw him in New Haven he'll go 100 per cent with you.

Thomas: Francis, he's got — look, he's got to depend entirely upon me and you.

Francis: Good.

Thomas: That's all I give fuck about, because I'm gonna come up with the end of it —

Francis: You come up with the end of it and he'll —

Thomas: They should be coming up here with me. I told 'em, let me be half way — I can't be going down there all the time.

Francis: Listen, you said that you've got the influence over these bastards. You call them up and tell them what the hell you want.

Thomas: Well, you see, I couldn't get ahold of Whitney. Whitey was (inaudible). I can't get ahold of him. I called the food place, I called his wife and his wife told me, "Tom, he left around twenty minutes after eleven this morning."

Thomas: And I'm on the highway, and I'll be here for another half or three-quarters of an hour to meet this — see if I can grab a thousand on the highway from somebody.

Francis: See what you can do. Give me a (Q-35) call back, and I'm sure you and him will have a very interesting talk tomorrow.

Thomas: All right.

Francis: O.K.?

Thomas: O.K.

Francis: O.K., Tom.

Voice: This last recording was made on February 12th at 1:30 P.M.

TAPE 2

(February 12, 1964 at 4:13 P.M.)

(Buzz.)

Francis: I was just talking to my mother.

Thomas: Oh, were you?

Francis: Yeh.

Thomas: Hey —

Francis: That's a long half hour I'll tell you.

Thomas: Who, me?

Francis: Yeh.

Thomas: Yeh, well, I'm trying to get some cash around, Francis. I got checks, but I can't — I got about thirteen or fourteen hundred in cash, that's all. I got plenty of checks and the fucking banks are closed and I've been on that highway and since that holdup nobody wants to keep any money. (Q-36)

Francis: No kidding?

Thomas: Yeh.

Francis: Can you get fifteen hundred?

Thomas: Oh, I probably could.

Francis: And get me the other five tomorrow?

Thomas: Sure.

See, that's what I was gonna figure. I figured you're gonna go down and see him tonight?

Francis: Well, like I said, I meet him somewhere and I don't want anybody to —

Thomas: That's your business. You do it — why in hell don't you do it tomorrow. I'll give you the whole God dam(n) thing early in the morning.

Francis: I can't do it tomorrow.

Thomas: Oh, yeh, tomorrow you work.

Francis: I can't do it.

Can you get me the fifteen hundred now?

Thomas: Well, yeh. I gotta go back over the house now,

and I'm going down to pick up the rest of this cash, and I drop back at the house.

Francis: Where can I meet you?

Thomas: Ah —

Francis: Or when and where?

Thomas: — give me —

Francis: It'd take two minutes.

Thomas: See, it's quarter after four now. About quarter to five? (Q-37)

Francis: Quarter to five. You say where.

Thomas: Go to that same spot again. That's a good spot.

Francis: You know where the bowling alley is?

Thomas: Yes.

Francis: Well, it's pretty crowded now and we won't be there too long anyway.

Thomas: No.

Francis: I just don't like using my car because I'm afraid the guy are gonna see —

Thomas: Well, we ain't gonna go anywhere are we?

Francis: No, I'd just as soon not, to tell you the truth.

Thomas: Where are the hell are we gonna go? I just give you this money and you go.

Francis: O.K.

Quarter to five over at the place.

Thomas: Yeh, because I'm leaving — I'm in Elmwood now. I've been trying to get you now for around fifteen minutes. You've been having quite a (inaudible) with your mother.

Francis: No, no.

Thomas: No?

Francis: Oh, no. Christ sake, two minutes.

Thomas: Well, coming back and forth —

Francis: In fact, the only thing she (Q-38) asked me was if I went to church this morning. So, we didn't talk that long.

Thomas: What time are you gonna see him tomorrow, Frank? We gonna see him tomorrow night?

Francis: Well, what's good for you?

Thomas: Well, any time is good for me.

Francis: He said, what's good for him it would be after seven anywhere.

Thomas: Oh, I don't care.

Francis: All right, because he's got to eat with the wife and all that —

Thomas: That's right. That's right.

Francis: He's a family man, you know.

Thomas: You know the place to go, down to Walter's.

Francis: Down to Walter's?

Thomas: Yeh, that's a beautiful place. We'll meet him at 67 — at 66. We can talk at the 66 Exit and —

Francis: Can I get a pencil?

Thomas: Huh?

Francis: Let me get a pencil.

Thomas: That's not important. All he does is get off at the Yankee Silversmith — the Exit of the Yankee Silversmith. That's Exit 66.

Francis: Yeh.

Thomas: You know where the Yale Motel is? (Q-39)

Francis: Right.

Thomas: He gets off the highway there and he goes into the Yankee Silversmith yard. He can see us coming down the hill when we get off.

Francis: Meet him at the Yankee Silversmith?

Thomas: Yeh. Let him be in the parking lot, then he can watch us coming off the highway.

Francis: That sounds good.

Thomas: Perfect — right down to Walter's — and there's nobody there.

Francis: Sounds good.

What time now shall I tell him?

Thomas: Well, you make the date. Whatever date you make with him is perfectly all right with me.

Francis: O.K. That's better because —

Thomas: I'll see you — quarter after four. Give me about quarter of five and five o'clock.

Francis: All right, I'll be over.

Thomas: All right.

Francis: I'll have my — well, I guess I'll have my car. She'll be home by then.

Thomas: All right.

Francis: O.K.

Thomas: Yeh.

Francis: O.K.

Voice: The last recording was made on (Q-40) February 12th at approximately 4:43 P.M.

(February 16, 1964 at 6:20 P.M.)

Francis: Hello.

Thomas: Francis?

Francis: Yeh.

Thomas: You having lunch — dinner?

Francis: No, no. I was taking a little nap.

Thomas: Oh, Christ, I told her not to bother you.

Francis: No, that's all right. She wants me to get up anyway. We're going over to play cards.

Thomas: Oh. You know, I made that call yesterday, did you hear from him?

Francis: No.

Thomas: Well —

Francis: How did you make out. I didn't even know what he wanted. Something about talking —

Thomas: Yeh. Well, he's deviating, Francis, you know? Remember I said, "I don't give a shit what happens to the other two guys."

Francis: What other two?

Thomas: Soapy and his brother.

Francis: Yeh.

Thomas: And the other guy?

Francis: Yeh.

Thomas: Joe?" (Q-41)

Francis: Yeh.

Thomas: I said "Just concentrate on Paul."

Francis: Yeh."

Thomas: That was the way we set it, you know? And he says, "Well, that's fine." Now, what he wants the other two guys — he wants to use them as the sacrificial lamb for Paulie, and the guy — it's no good that way.

Francis: Well, like I say, whatever way. That doesn't have to be either. What he's thinking about is experience — you know, to hurry it up.

Thomas: Oh, you see, it makes it looks as though — you know, there's a lot of honor between the brothers. It's just like saying —

Francis: Oh, sure.

Thomas: You know what I mean?

Francis: Or, sure.

Thomas: You understand. He said, "Jesus, you think he meant it that way?!" I said, "I don't think so," I said, "I don't think he would want to do it one way and have you deviate from it another way." He said, "Well, that's what he told me."

Francis: Are you sure you got it right?

Thomas: Yeh.

Francis: Because it doesn't sound right to me either.

Thomas: Huh? (Q-42)

Francis: It doesn't sound right to me either.

Thomas: Oh, I don't know, but see, that's what Paul told me.

Francis: No, he wouldn't do that.

Thomas: You know, the guy is an awful stupid guy — them guys — Paul.

Francis: Yeh.

Thomas: You see, they don't know to — this thing is a shock to them. Do you understand? You remember I told you, Frank?

Francis: Yes.

Thomas: Believe me, it's a shock.

Francis: Yeh.

Thomas: And it's a hard thing to believe, see?

Francis: Yeh.

Thomas: And these guys get all confused. Actually I don't think it was a good idea for me to have him talk to them. I should have just handled it myself because I can talk with a free mind where he's nervous, see.

Francis: Maybe Paulie got it wrong, because I'll tell you it doesn't sound like him at all. I know he wouldn't do something like that.

Thomas: Well —

Francis: He's not that type of an individual. (Q-43)

Thomas: I don't like to call him because — you call him, it would be better. Not today — tonight.

Francis: Well, I'll get in touch with him tomorrow.

Thomas: Take your time. Yeh, it's not that important. I just — I got a little bit tied up looking around at a couple of spots, and my place fell through here; the office fell through here.

Francis: Where?

Thomas: Oh, that fucking office out there. Christ, by the time we clean it up, Francis — see, he left it like a pig —

Francis: Oh, you mean —

Thomas: — farm. It'd be a hell of a spot though.

Francis: Yeh. Oh, and how.

Thomas: I like the God damned thing, you know.

Francis: You mean the ranch?

Thomas: Sure, I'm looking around for a package store for ourself here, you know.

Francis: Around here?

Thomas: Sure. What the hell, I figured down there is all right too, but what do you think?

Francis: You know, it's fantastic. When you said that price that you'd make in a year —

Thomas: Oh, well —

Francis: — I thought it — (Q-44).

Thomas: I mean — I mean — you know what I mean, Francis. He was asking me how much business you could do.

Francis: Yeh, that's what I mean.

Thomas: Oh, yeh, business wise, but that isn't the end.

Francis: Yeh.

Thomas: The end is — oh, Christ sakes, better than half of it.

Francis: Is that right?

Thomas: Oh, sure.

Francis: That's fantastic. Unbelievable.

Thomas: Oh, I know.

Francis: Oh, I know. I suppose you would know I mean, I wouldn't know something like that.

Thomas: Well —

Francis: I'm sure that —

Thomas: Well, the way he told me was that he wants me — he wants the other two guys to cop a plea for me — put me up as the — the other guy's got his own. He's got a son going to Georgetown.

Francis: Yeh.

Thomas: To be a lawyer. He's all disappointed anyway.

Francis: Well, they're probably going to cop a plea anyway.

Thomas: I don't know what they're gonna do. He thinks — the other guy thinks he can beat this, (Q-45) that other guy. I don't know. That's his own mind. Let him worry.

about that. I don't want to get involved, and it wasn't our part of the bargain, and I think Mr. Ahern did a hell of a job in getting — doing things for Paul like he is.

Francis: Yeh.

Thomas: That's why I didn't want to get into that other thing. Let them worry about themselves, and I sold them on that idea. I said, "What the hell do I care about that? That's wasn't part of the deal." See.

Francis: Yeh. Well, I'll talk to the kid anyway, and —

Thomas: Well —

Francis: You're sure he's not doing it to hurt anybody else?

Thomas: Yeh. Well, I know in my mind what you told me, and I think that that's the way we ought to go through with it.

Francis: Yeh.

Thomas: He's got this guy Jacobs — who the hell ever he is — and he must be a guy like Hymie Olman (sic.) around here —

Francis: He's an attorney.

Thomas: He's got the office, yeh?

Francis: Yeh.

Thomas: We're working on a state guy now, Frank. Worked on him this afternoon.

Francis: Oh, yeh? (Q-46)

Thomas: I worked on him this afternoon.

Francis: That good?

Thomas: Well it could be. It could be very —

Francis: That's where you gotta be careful.

Thomas: Well — because I ain't gonna — we ain't gonna tip our hand.

Francis: Yeh, well, that's what I mean.

Thomas: No, we're only gonna ask it for one spot — on the highway.

Francis: Are you sure he's not gonna go anywhere?

Thomas: No, we're gonna make sure that he gonna let the beavers go on the highway.

Francis: Jimmy?

Thomas: Jimmy. Yeh.

Francis: Ah, you say "we." Who, you and Freddie Amaio?

Thomas: Yeh.

Francis: He seems like a very nice guy. I can't believe that he's younger than you though.

Thomas: Oh, yeh.

Francis: Next time I see him I'm gonna ask him.

Thomas: Yeh, he is. He's five — five or six years younger than me. Five year anyway.

Francis: Jimmy a good worker? (Q-47)

Thomas: Jimmy?

Francis: Yeh.

Thomas: Oh, he's got a lot of class.

Francis: Yeh.

Thomas: Well, he had all of them big shot business men down on the highway.

Francis: Yeh.

Thomas: They all like Jimmy.

See, right now he's tied in with — he's working with Joe Matarese — he's his front man for him, you know?

Thomas: Maitre de like —

Francis: It sounds like it's a far-off deal, right?

Thomas: Huh?

Francis: It sounds like our deal is a pretty far-off deal.

Thomas: No. Oh, no, no, no. Our's is coming along good, Francis.

Francis: It is?

Thomas: (Inaudible)

Francis: Yeh?

Thomas: We can work — even if we don't wind up

with nothing for six months, as long as we take care —

Francis: That's right.

Thomas: Because our's will take care of (Q-48) you all the time. We got something for you.

Francis: We'll make our's off of Tropiano.

Thomas: No. Well, you — for you I don't give a shit,

Francis: (Laughter).

Thomas: We'll take — you gotta chop it out anyway.

Francis: Yeh.

Thomas: You gotta chop it out. We'll just let — just let —

Francis: How does he feel? Is he gonna run or what do you think?

Thomas: Well, you see. Whitey — nobody is ever(y) gonna catch him. Whitey is got operations going that he ain't got no part of himself and they're runnings because no matter how many times they catch his men his men are — they'll die.

Francis: That's true. Oh, hey, sure.

Thomas: They'll go down. That's why his operation —

Francis: The games, I mean.

Thomas: Then he's got the priests on his side. He goes for fifty or sixty dollars a week just for — on fruits and (b)egetables for down there, and mushrooms and — oh, meats, and Christ's sake, it's a steady thing.

Francis: Who, to the priests you mean? (Q-49)

Thomas: No. For the poor; poor families and everything else.

Francis: Oh, yeh.

Thomas: And the church — Christ's sake, he can't do nothing wrong, you see, because nobody could put the finger on him.

Francis: Yeh.

Thomas: And with the operation going — and he don't stand for any crookedness, you know.

Francis: No, I don't blame him. You always get jammed up that way.

Thomas: Oh, yeh. He goes good, and, of course —

Francis: I mean about the game.

Thomas: Oh, the game is gotta be right. If it ain't right he don't want it.

Francis: I mean, does he think it's gonna go?

Thomas: Oh, yes, it could be the biggest thing around here if — he just don't think it's gonna go, and he think that Steve wants to trap him, and that still he ain't gonna get that out of his mind. But, you see, that mind is trained that way. See, that's trained way, way back that way, Francis.

Francis: Yeh.

Thomas: Don't believe even your brother.

Francis: Yeh.

Thomas: See? (Q-50)

Francis: What the hell can he do to prove it?

Thomas: Nothing. He don't have to do nothing. All he's gotta do is just go along with his end and it will take time to marry him.

Francis: Yeh.

Thomas: He could go on indefinitely, and he won't marry him, but he'll say, "You did a fantastic job," and all he wants to do is put ten cents in and he wants to get ten cents out. So —

Francis: Yeh.,

Thomas: — you can never tell whether it's part of his operation. But, without him the town don't run.

Francis: No.

Thomas: When Paulie starts Bridgeport shuts right down.

Francis: Yeh.

Thomas: I know that will shut down up as far as Norwalk.

Thomas: Oh, sure.

Francis: Well, in other words, you think Tropiano is looking to have the game though?

Thomas: Oh, I know that. It's gonna go. It's gonna go.

Francis: In other words, he trusts Ahearn that much anyway? (Q-51)

Thomas: Well, Paulie and me have to trust him, see?

Francis: Yeh.

Thomas: Even though he says, "I don't know how in hell you guys are doing it," but "you ain't gonna catch me going in there." He won't even walk into that thing — it will be months and months before he even walks in.

Francis: No kidding.

Thomas: That's right. He'll — he'll honor Mr. Ahern in his own particular way — it'll be a crude way — he'll say "I don't know — you know what he wants, he's waiting for me to get myself off guard, but he ain't gonna catch me."

Francis: Yeh.

Thomas: That's what's in his mind and you ain't gonna change it.

Francis: No.

Thomas: But, I know that he feels entirely different towards the whole situation, and I think he'll feel a hell of a lot better when Paulie's deal is out, because Paul is the Godfather to his two kids, do you see?

Francis: Yeh.

Thomas: And he feels bad about it, see. But, actually, when one cries the other will cry, but I think that Paulie is — he's a worrier, and he's no good the way he is right now, and I know — (Q-52)

Francis: As far as you're concerned —

Thomas: It's gonna go. It's gonna go. I know it.

Francis: — Tropiano hasn't backed out on the deal?

Thomas: No, no, no, no, no, I know that.

Francis: All right.

Thomas: No, I know that. It's wonderful. You just — don't make it too complicated. Tell him Paulie explained it this way to Tom and he was wondering if that's the way it was, because originally that wasn't what I told him. You know?

Francis: Yeh.

Thomas: So, don't make it so that it's too complicated, and I'll contact you tomorrow — tomorrow night.

Francis: No, I'll be working tomorrow night.

Thomas: That's right. Daytime.

Francis: Yeh.

Thomas: All right, I'll call you Tuesday.

Francis: Look, if you don't get ahold of me tomorrow give a buzz Tuesday morning.

Thomas: Yeh. Tuesday after eight o'clock.

Francis: Yeh.

Thomas: All right.

Francis: O.K.?

Thomas: Goodnight. (Q-53)

Francis: Right, Tommy.

Voice: The last recording was made on February 16th at approximately 6:20 P.M.

(February 18, 1964 at 12:45 P.M.)

Francis: Hello.

Thomas: Frank?

Francis: Yeh, who's this?

Thomas: Tommy.

Francis: Oh, Christ, I couldn't figure who the hell it was. I thought it was my brother or something.

Thomas: No. I had to go to New Britain and I'm on my way in. I'm all free.

Francis: Yeh.

Thomas: If you can sneak away I'll meet you somewhere.

Francis: How about Sears Roebuck?

Thomas: Ah —

Francis: There's a lot of cars.

Thomas: Why don't you keep it closer to your end down there — down in back of Casey's. Is that any good?

Francis: Back of where?

Thomas: Back of the — Tony Cacasey's (sic) place, what's that, no good?

Francis: Oh, that's all right. That would be all right. Anywhere you say. It's immaterial to (Q-54) me.

Thomas: That's all right. I'm coming in from New Britain.

Francis: O.K. In back of the Fernwood?

Thomas: Right in back of the Fernwood. O.K.

Francis: O.K.

Thomas: All right. I'm just leaving now.

Francis: O.K. Tom. Right.

Voice; The last recording was made February 18th at 12:45 P.M.

(February 19, 1964 at 9:30 A.M.)

Thomas: What time tomorrow?

Francis: What time tomorrow?

Thomas: Yeh.

Francis: Tomorrow night?

Thomas: You said Thursday.

Francis: Well, it's up to you; I don't care.

Thomas: Well, what time you say. You said to do it, so I did.

Francis: And would he make it?

Thomas: Yeh.

Francis: Any time you say is all right with me.

Thomas: All right, then, I'll have to (Q-55) contact him sometime today or tomorrow morning.

Francis: Find out anything good or bad?

Thomas: Well, I was more interested in my thing over here —

Francis: That's what I mean.

Thomas: I was talking to this cop after he got through. I figured he worked on your shift.

Francis: Yeh.

Thomas: He was over in West Hartford he told me in the bank and he heard this. Over at the West Hartford Trust here.

Francis: Did you talk to the cop last night?

Thomas: Yeh. He says he doesn't know whether — the guy told him he didn't know whether it was state now or the Treasury Department guys —

Francis: Well, Jesus Christ, if it was a cop he'd know whether it was West Hartford or not.

Thomas: Well, the fellows weren't in plain clothes or anything, and the guy was a little bit confused I guess. I don't know. I ain't gonna get upset about the God damned thing. I'm gonna wait until it happens. The hell with it.

Francis: Well, boy, I've been doing an awful lot of thinking.

Thomas: Well, —

Francis: You must be doing it too?

Thomas: Well, I don't have to think that (Q-56) much.

Francis: Just like you said, the amount is what bothers me. Just like you said —

Thomas: Nothing bothers me that way, Francis.

Francis: Huh?

Thomas: Nothing bothers me that way. That isn't what I — I'm just thinking of the guy that I'm breaking bread with. That's what I keep thinking about all the time.

Francis: How about —

Thomas: That —

Francis: How about Rush, are you going to go see him? Maybe he can give you an answer that might help us, I don't know.

Thomas: I don't know. I don't know. I don't like to go in and involve anybody.

Francis: If it happened a month ago or two months from now that'd be different, but that particular time — that's what bugging me.

Thomas: Well, I ain't gonna get alarmed about it. I'm gonna wait until it happens. Like I said before, what the hell, I go — a lot of times I run in and lots of times Joe Hennesy gets, for Christ's sake, fifteen hundred, two thousand dollars worth of checks. What the hell, I don't have it always, always all the time, you know, the cash.

Francis: Yeh, but — (Q-57)

Thomas: I run up for a week or ten days, you know, and pick it up —

Francis: The whole bit here is why would they want a check? That's what I can't —

Thomas: I don't know.

Francis: The only thing I can see is the ranch, and that's — like I say, I thought that that was a dead issue.

Thomas: This kid — this kid now, the way he said last night, he said, "I don't know whether the guy" — I didn't want to have him call the guy up because it would make it look too obvious, so I said, "What did he tell you?" "Well," he says, "He first said that he thought it was West Hartford cops and state cops."

Francis: In other words, this is the cop that asked the guy in the bank?

Thomas: No, this guy says to him — you know, this guy must come over the place, whoever they are that come over the Cyprus, I guess, to dance or drink or something.

Francis: Yeh.

Thomas: Because there must have been some cops over here investigating Mr. DiBella (sic). That's how it started.

Francis: Oh, over at the place they were checking?

Thomas: Where?

Francis: At the Cyprus? (Q-58)

Thomas: No, no. This guy — these people that must work over there must stop at the Cyprus.

Francis: Oh.

Thomas: And the guy come in there with the girls, I guess. I mean (inaudible) — they were going through my records. That's how I got it.

Francis: Oh.

Thomas: So, this kid happened to go over there and cash a check or something, and he said the guy called him, and told him — they're friends — this is a young cop.

Francis: You don't know who the cop is?

Thomas: Yeh, sure I know him.

Francis: Do you think it'd do me any good to do any checking?

Thomas: Pardon?

Francis: Do you think it'd do any good to do any checking?

Thomas: No, he ain't that — I don't think he's that —

Francis: In other words, if I knew the cop maybe he'd start talking to me.

Thomas: I don't know. I'll think it over. In the meantime, I'll set this up sometime for tomorrow night then.

Francis: You don't think Whitey's changed his mind? If he found out about this I suppose he would. (Q-59)

Thomas: Yeh, he probably would. He probably would.

Francis: Jesus Christ —

Thomas: I don't see how this should have any bearing on it though.

Francis: Oh, well, Jesus Christ, it has a lot of bearing on me.

Thomas: Well, we'll see. I can let you know a little later on. I'll set it up for tomorrow anyway.

Francis: Either during the day or —

Thomas: Well, it'll be in the evening, like you say. You said tomorrow night.

Francis: All right. Yeh, that's all right.

Thomas: See.

Francis: That's all right.

Thomas: That will give you a better chance. At least you'll be home with your wife when she comes home and then you can sneak out for a couple hours.

Francis: Yeh.

Thomas: All right, Francis.

Francis: In other words, you don't think we have any sweat with this thing or what?

Thomas: In which way, Frank?

Francis: Hey, listen, like I say, I don't like it myself.

Thomas: Well, I mean, the thing is — the pistol is pointed towards me right now. (Q-60)

Francis: Yeh, but if the pistol is pointed towards —

Thomas: I'm not worried about it because it's nothing I'm gonna worry about. I mean, I'm not worried about it.

Francis: Well, you seem more at ease today than you were yesterday. Yesterday you were worried about it.

Thomas: Well, like it came to me as a complete shock yesterday. And then I got it a little straighter last night with this kid.

Francis: I wish to hell I knew who that kid was.

Thomas: I do a lot of friends — I do a lot of favors for people; I don't ask them for nothing. And, the least they can do is — I think that guy up there watches me.

Francis: If I could find out the cop and I could start bullshitting with him somehow, then check and see why — that's all I want to know, why. I don't give a God damn who.

Thomas: Yeh, but that wouldn't prove anything.

Francis: Yes, if I find out who, I'd find out why.

Thomas: Well, we oughta find out, if we could find out, who went over there then we'd know.

Francis: That's what I mean. If I could (Q-61) just find out who the hell went over there.

Thomas: Well, I don't think he knows, because I think — I don't think the guy knew, because, like he said, he didn't know whether it was Treasury men or state men or—

Francis: Well, you told me yesterday it was definitely the West Hartford Police.

Thomas: They are. He said yesterday he was — like I told you last night, and I said, "Well, how" — (Inaudible) — now he saw him again after.

Francis: Yeh.

Thomas: And after the guy gets out of work, that's what I'll do.

Francis: Boy, I did a lot of thinking last night, I'll tell you.

Thomas: Well, I — if what's his name was on the ball last night he would have found him.

Francis: Who?

Thomas: Your man "Baker."

Francis: Baker?

Thomas: Yeh.

Francis: What do you mean, Baker?

Thomas: He just left him.

Francis: You just left him?

Thomas: I just left him and Baker popped in.

Francis: You just left him and Baker just popped in? (Q-62)

Thomas: Yeh.

Francis: Where the hell were you?

Thomas: Well, I was just coming back from the north end — Tony Nigro was stuck with a flat tire on (Inaudible) —

Francis: Yeh.

Thomas: And he asked me if I'd take him to New Britain. I said, "Yes." So, we stopped and had a cup of coffee.

Francis: Oh, I know where you were; you were at the Toddle House.

Thomas: Yes.

Francis: He was picking up a hamburg for me. You were in there?

Thomas: Yup. It was about —

Francis: Twelve o'clock.

Thomas: Twelve o'clock, yeh.

Francis: Yeh.

And you were there?

Thomas: Yeh.

Francis: Jesus Christ, I wish I knew you were there.

Thomas: Well, I was right there. He looks good, Johnny.

Francis: Johnny is all right.

Thomas: He make a handsome voice. He's thinning out, I think.

Francis: No, he's still got a lot of weight. (Q-63)

Thomas: Yeh.

Francis: He's still got a lot of weight.

In other words, the cop was there then?

Thomas: Nope. Just left a few minutes before.

Francis: You don't want to tell me who the cop is?

Thomas: Right at this moment, Frankie, I can't. He's the guy that Christ sent down to me.

Francis: Yeh, but he's gotta help me too. I'm in it just as deep as you are. True?

Thomas: Well, we'll see, Francis. We'll see. We'll — I can perform.

Francis: Well, I hope you can. Like I say, if you can take this sweat away I'd appreciate it, I'll tell you — if you find out for sure.

Thomas: I will.

Francis: I don't like it. It don't go right with me.

Thomas: O.K. I'll set it up. I'll call you tomorrow anyway.

Francis: Did you call Whitey regards that attorney?

Thomas: Who? Oh, yeh, I did what you told me. You know that, when I went to that phone, after I dropped you.

Francis: Yeh. Well, I'd like to see (Q-64) what happens there too. That ought to be interesting.

Thomas: Yeh.

Francis: Are you gonna give me a buzz?

Thomas: Yeh.

Francis: O.K.

Thomas: O.K.

Francis: O.K.

Thomas: Hey, what happened on your street there last night? The water main broke?

Francis: Yeh.

Thomas: Well, I went down — I was coming back, you know, and I was going down that way, you know, and, Jesus, there was nobody around and water was coming out of there a mile a minute, and there was no crews or nothing. It must have just broke when I got by there.

Francis: Did you report it?

Thomas: No.

Francis: I heard him send the cars down there.

Thomas: What?

Francis: I heard him send the cars down ther.

Thomas: Because I was just — just after leaving the Toddle House, taking that kid down to get that car down in New Britain.

Francis: Oh, no, it was before that, wasn't it?

Thomas: Well, I don't know if this had (Q-65) been going on for quite a while. I imagine — but there was nobody around, and there was just one guy looking at it.

Francis: Yeh, I heard it was quite a break.

Thomas: Oh, Christ, the water was coming out of there a foot high.

Francis: Yeh.

Thomas: There must have been a mess around there this morning.

Francis: I didn't see it this morning at all. I didn't even go down there. I went right home.

Thomas: Oh, yeh, because of the snow too.

O.K., Francis.

Francis: O.K.?

Thomas: Yeh.

Francis: Give me a buzz.

Thomas: Yeh.

Francis: Right, Tom.

Thomas: Right.

Voice: The last recording was made on February 19th at 9:35 A.M.

TAPE 3

(FEBRUARY 20, 1964 AT 12:12 P.M.)

Francis: — phone, and pull it right off the fucking wall. (Q-66)

Thomas: Holy Mackrel, Frankie, I've been trying to get you for an hour and a half.

Francis: I thought you were dead.

Thomas: Oh, no, Christ, I called two or three times, but I'm in a very bad spot here where I am.

Francis: You call me back?

Thomas: They wanted to let that thing go a day or two on account of Paulie. They're all upset about that case.

Francis: Oh, shit, if he doesn't want to meet me, fuck it.

Thomas: I know it, but I can't do nothing. They're all upset. He's all upset about the God damned thing. He called up last night — I called him last night, see —

Francis: Yeh.

Thomas: —and they're all upset about that God damned Paulie. I don't know what the hell —

Francis: Well, what the hell difference does that make whether he meets me or Paulie? All I want to do is see him for two fucking minutes and he can screw.

Thomas: Yeh.

Francis: And that'll satisfy me. I won't even have to go down to that fucking end of town any more.

Thomas: Well, I'm fed up with it too. I got my belly full of them.

Francis: For Christ's sakes, I'm willing to meet him half way. (Q-67)

Thomas: Yeh. Well, I gotta call him again right after lunch — right after their lunch — it's busy.

Francis: Christ's sake, if he could meet me — just talk to me two fucking minutes, and then I'll tell this other kid "Everything's fine, forget it" —

Thomas: Yeh.

Francis: "Go along and everything is gonna be good."

Thomas: Well, I can't tell him — I'm in a bad spot here, Francis.

Francis: Huh?

Thomas: I'm in a very bad — I had a nice spot the last couple times I called you.

Francis: Yeh.

Thomas: I can't talk here. I'm talking on an open phone.

Francis: What the hell time is it, quarter after twelve?

Thomas: Quarter after twelve.

Francis: When can you call me, so I'll know for sure? Call that son-of-a-bitch and tell me that all I want is two minutes — the least he could do is give us —

Thomas: I'll call him up at 1:30. He told me to call him up 1:30 again.

Francis: At least he could give me two minutes of his fucking time; that's all I want. (Q-68)

Thomas: O.K., Frank.

Francis: All right?

Thomas: I'll call him back again.

Francis: Did you hear anything about anything else?

Thomas: No, nothing. I ain't giving a shit. Frig it.

Francis: Look all right?

Thomas: It's a situation that can happen to anybody. I mean, whoever is looking for me and looking for me — what the hell can I do about it? I'm not going to get excited about it.

Francis: Like I say, I'm doing an awful lot of worrying about that fucking thing until you tell me something good.

Thomas: Well, I'm more worried about you than I am myself. I just hope nobody pins you to the thing, that's all.

Francis: How can they pin me —

Thomas: That's one fucking — I'd never pin you.

Francis: Well, do you think that son-of-a-bitch will give me two minutes of his fucking time?

Thomas: I think he would.

Francis: Well, that's all I ask —

Thomas: And then something about some tomato truck — you see, he's got this produce business.

Francis: Well, that son-of-a-bitch —

Thomas: And something happened, coming all (Q-69) the way from Florida, down there on the Jersey Turnpike they must have had some God damned accident or something and tomatoes all over the fucking road, I think. I don't know what it's all about.

Francis: Well, that son-of-a-bitch can give me two minutes tonight or —

Thomas: All right, let me call you right after 1:30.

Francis: —he can go jump right in the fucking river. All right?

Thomas: Yup.

Francis: Tell him — like I say, I don't want all night. We can sit in the car for one minute and then he can screw.

Thomas: O.K. boy.

Francis: In fact, I don't want to make it too long anyway.

Thomas: Yeh.

Francis: Look, give me a time when you're gonna call me so I can get some things done.

Thomas: Well, right after 1:30 I'll call. Well, I'll call you any time you want.

Francis: Well, I want to know once you know definite from this son-of-a-bitch so we can plan it.

Thomas: Well, if I get the answer from him by 1:30 I'll call you right after 1:30 — between 1:30 and 2. (Q-70)

Francis: All right.

Thomas: O.K. boy.

Francis: Definitely between 1:30 and 2?

Thomas: O.K.

Francis: Like I say, tell him I don't want his life. I just want two fucking minutes.

Thomas: O.K. boy.

Francis: All right?

Thomas: Yeh.

Francis: Right, Tom.

Voice: The last recording was made on February 20th, 1964 at 12:12 P.M.

(FEBRUARY 20, 1964)

Thomas: Yeh, Soapy called me. I just got a call from Soapy.

Francis: Yeh.

Thomas: And Soapy left a message.

Francis: Yeh.

Thomas: Pauline is not — he's coming back, but I told him I had to let you know by 2 o'clock.

Francis: Yeh.

Thomas: So, what Soapy says is that they don't want to do a God damned thing until Paulie is all straightened out.

Francis: Well, at least he could meet me, the prick, (Q-71)

Thomas: Huh?

Francis: At least he could meet me.

Thomas: What's that?

Francis: I say at least he could talk to me.

Thomas: Well, I discussed that with him and they're just upset about the whole thing. Something happened down there — I don't know what the hell happened down there.

Francis: Well, did that attorney go down and see them?

Thomas: I guess so.

I did what you told me. But, I still gotta get ahold of Paul.

Francis: Do you think —

Thomas: Soapy just told this. Now, I was "Was this after I called him or before?"

Francis: Yeh.

Thomas: And — because I — when I called you.

Francis: Yeh.

Thomas: That was the first time I called.

Francis: Yeh.

Thomas: Now, I called again.

Francis: Yeh.

Thomas: I said, "When did you get this?" He said, "Well, this was this morning," because this guy's in a fog — this kid. But, I just wanted to keep (Q-72) my word with you that I would call you back, and even now I'm a half hour late.

Francis: Well, do you think that Tropiano would at least do me the courtesy to give me a call here at home?

Thomas: Well, I'll know better through Paul right now because I can't get ahold of him. I tried — I tried all morning.

Francis: Well, in other words, you think that Tropiano would give me a call here? We'll settle it right here and now.

Thomas: I'll try.

Francis: Huh?

Thomas: I'll try, if I can get the call in.

Francis: Well, you can get ahold of him. You know where you can get ahold of him somewhere. What are you doing tonight?

Thomas: I'm in a bad spot here (inaudible) Let me call you back?

Francis: All right.

Thomas: All right.

Francis: Right away?(Q-73)

(FEBRUARY 20, 1964)

Thomas: Finally get you. That phone of yours is terrible.

Francis: No, the phone hasn't been busy in the last two hours.

Thomas: I've been trying to get you, and I called my house and my wife said "Mr. Gilmore has been trying to get you (or ya). I just walked in the door.

Francis: I thought you were gonna call me right back?

Thomas: I couldn't. I didn't have any message for you. I ain't even got one now.

Francis: You haven't even got one now?

Thomas: No. They're all upset down there about Paul. They're all upset about Paul — really upset. I don't know what the hell happened down there. They want me to go down there, and I'm too God damned (Q-74) tired.

Francis: You're not gonna go down?

Thomas: Ah, to hell with them. Christ, I'm disgusted with them. I don't know what the hell's going on down there. Something happened, I don't know.

Francis: You didn't see Whitey today?

Thomas: No, I was around Hartford — New Britain all day today.

Francis: For cripe sakes.

Thomas: They want me to go down, and Ethel (sic.) says — not Ethel, but down at Walter's the place there, told me that I had a couple calls from New Haven, and I called you first. I just went in there about fifteen minutes ago, and your line was busy twice, and I called —

Francis: My line was busy?

Thomas: Twice.

Francis: I hope you've got the right number.

Thomas: I don't have no trouble. I just got home. I just walked in the door.

Francis: Oh.

Thomas: Just got to my place here not even five minutes ago.

Francis: You couldn't have called my number because it wasn't busy.

Thomas: Well, I called there, I would say, about ten or fifteen minutes ago.

Francis: Yeh.

Thomas: Because I've been trying to get — and then I called here, my wife — probably it's about the same time I'm calling — you're calling my house and I'm trying to get you.

Francis: What are you gonna do tonight?

Thomas: I want to stay right here. I just got home and my wife's got a nice steak for me and I'm gonna eat the son-of-a-bitch of a thing.

Francis: You wouldn't be out in about an hour?

Thomas: I wouldn't like to. Jesus, I'm so God damned beat up tonight, I'm telling you. I've been on the go since 7:30 this morning.

Francis: Yeh.

Thomas: I'm so God damned tired — I had to go up to them horses, and nobody went up there to plow out, and I

got stuck up there, and I was alone, and I'll be a son-of-a-bitch, I'm dead, Frank.

Francis: Yeh.

Thomas: I really am. I'm beat. Honest to Christ, she's got a nice looking steak, and she's all teed off because I got in late —

Francis: Ahearn is supposed to be coming down and seeing me in about a half hour, and I just wondered if you were there I would give you a call.

Thomas: Down your house?

Francis: Well, no, no, no. (Q-76)

Thomas: Oh.

Francis: I'd give you a call, and you could probably talk to him on the phone, and say, "Hey, don't worry everything's o.k."

Thomas: Well, as far as I'm concerned I don't think there's anything changed, Francis. I think they're all concerned about him. He's a nervous guy. He feels he's gonna blow that license down there, and that's what he feels, and that's what some lawyer told — who's Jacobs?

Francis: I don't know who the hell Jacobs is.

Thomas: Well, Francis —

Francis: If he didn't do what we told him I don't give a good God damn. We went the route, and if he didn't do what you told him —

Thomas: They got him all upset, and they figured, well, he's been — he's had the violations for frequenting gambling.

Francis: Yeh.

Thomas: And he's worried about the God damned thing. So, what the hell, this isn't anything that happened now, so what the hell they want to cry over spilled milk — that's happened before.

Francis: Yeh. But you think the deal between Tropiano is still the same?

Thomas: Well, I wouldn't say any different. (Q-77)

Francis: Sure. I can't see any different either; I don't know why, but this kid's worried, that's all.

Do you think you'll be home?

Thomas: I'll be home, yeh. I'm gonna have something to eat; I'm dead.

Francis: You'll be home in about an hour?

Thomas: Oh, yeh.

Francis: Or an hour and fifteen minutes?

Thomas: Yeh. I'm not gonna go nowhere. I'll be right here. Call back.

Francis: Well, if you'r gonnabe somewhere tell me, because Christ's sake, I've been trying to get ahold of you all God damned day.

Thomas: No, no, I'll be right here. I just walked in the doof, and I ain't gonna leave. Just take my shoes off; that's as far as I got.

Francis: In other words, you'll be there in about another hour?

Thomas: Yeh.

Francis: O.K.

Thomas: All right.

Francis: Right.

Transcribed by:
Arthur E. Moan, Jr.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 14,263

RALPH TROPIANO

v.

ROBERT L. MOSELEY, WARDEN,
FEDERAL PENITENTIARY,
LEAVENWORTH, KANSAS.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner is presently a federal prisoner in the Federal Penitentiary, at Leavenworth, Kansas, having been convicted and sentenced for violating and conspiring to violate the Hobbs Act, 18 U.S.C. § 1951 (interference with commerce by threats or violence). This writ of habeas corpus was originally brought in the District of Kansas and was transferred to this Court pursuant to 28 U.S.C. § 1404(a). The Petitioner is not challenging his present federal sentence, but alleges constitutional errors in a prior state conviction upon which he is required to serve three to six years, commencing upon his relief from federal custody. He claims that this circumstance justifies federal jurisdiction under the pending sentence doctrine of *Peyton* v. *Rowe*, 391 U.S. 55 (1968). His petition alleges that the following errors occurred in his state court trial: (1) certain tape-recorded evidence of a conversation between a police officer and a co-conspirator was improperly admitted into evidence; (2) the jury charge failed to adhere to the rule of *Griffin* v. *California*, 380 U.S. 609 (1965); and (3) the defendant was denied the opportunity to cross-examine a state witness fully. The Court finds that the application is without merit and the writ is denied.

The petitioner's state charges alleged in substance that

he (and others tried separately) conspired in violation of Conn. Gen. Stat. § 54-197 to "offer money to police officers with the intention of illegally influencing the latter's behavior, so that illegal gambling and unlawful liquor establishments might be permitted to operate." *State* v. *DiBella*, 157 Conn. 330; 338, 339 (1968). During the course of the trial, a tape recording was played disclosing a conversation between a co-conspirator and a police officer. The jury not only heard the co-conspirator's words, but also the policeman's response and comments. The petitioner contends that the jury was influenced by the policeman's statements and that his case was thereby greatly prejudiced. This Court concurs with the conclusions of the State Supreme Court when it said:

> "Although Reynolds' part in the conversation was not admissible to prove the truth of any assertions made by him, since he admittedly was not a co-conspirator, nevertheless his portion of the conversation was admissible for the limited purpose of giving meaning and coherence to DiBella's statements. See *United States* v. *Morello*, 250 F.2d 631, 634 (2d Cir.); 7 Wigmore, Evidence (3rd Ed.) § 2097, 2099." *State* v. *Tropiano*, 158 Conn. 412, 421 (1969).

In respect to the petitioner's second point, no claim has been made that error was committed by the court in its charge, by making a direct comment concerning the defendant's failure to take the stand or testify in his own behalf. The defendant's trial attorney had requested the judge to instruct the jury that no adverse inferences could be drawn from the defendant's failure to testify. *See United States* v. *Schabert*, 362 F.2d 369, 372, 373 (2d Cir. 1966). The trial court in the present case charged as follows:

> "From the fact that a man is presumed to be innocent, the next principle follows; namely, that the burden of proof is upon the State throughout the trial to

prove an accused guilty and an accused does not have to prove his innocence. That is to say, it is incumbent upon the State to carry the burden of proving its case in all its essential elements before a verdict of guilty may be rendered. Mr. Ralph Tropiano was under no obligation to go forward with witnesses to defend himself or to take the stand. No presumption, no inference of any kind should be drawn against him because he hasn't undertaken to testify or because he has not called witnesses in his own behalf.

"The accused had the right to testify if he so elects. He has the right to call witnesses and explained the case from his standpoint, but no inference of guilt should be drawn against him for the reason alone that he does not elect to exercise either of those rights; because, as I have said, he is presumed to be innocent and the State has upon it impressed by law the burden of overcoming that presumption and establishing beyond a reasonable doubt every essential element of the crime charged. And, until that is established by evidence beyond a reasonable doubt, the presumption of innocence is not overcome." (Respondent's Exhibit #1, p. 62).

The petitioner argues chiefly that this portion of the charge quoted was violative of his constitutional rights in that it did not indicate that he had the right to remain silent (as opposed to the actual phrase used, "no obligation to take the stand"); and the court used the expression, "no inference of guilt should be drawn against him for the reason alone that he does not elect to exercise either of those rights". In examining these words, they must be considered within the framework of the totality of the Court's charge to the jury and not removed from their context. No particular form need be utilized to advise the jury of the defendant's right to remain silent and all remarks on this point must be viewed within the framework of the charge

as a whole. *See United States* v. *Cusumano*, 429 F.2d 381 (2d Cir. 1970). The charge throughout stressed that the jury could draw no inference from the failure to take the stand and did not violate the bounds of *Griffin*. On the related point argued by the petitioner that this portion of the charge did not adequately explain the burden of proof required to convict, reference should be made to *United States* v. *Hart*, 407 F.2d 1087 (2d Cir. 1969), where the court declared that the "reasonable doubt" standard may be expressed in various terms. The trial court adequately explained the burden of proof to the jury.

The final error alleged by the petitioner need not be considered here as it does not present a constitutional question. The petitioner claims, as he did in the state courts, that his rights were violated by the trial judge's exclusion from evidence of the fact that one of the state's witnesses had previously pled guilty to the same charges. This is not an area which may be reached on federal habeas corpus.

> "His (the trial judge's) action has been affirmed by the highest court of the Commonwealth. We are not at liberty to conjecture that the trial court acted under an interpretation of the state law different from that which we might adopt and then set up our own interpretation as a basis for declaring that due process has been denied. We cannot treat a mere error of state law, if one occurred as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question." *Gryger* v. *Burke*, 334 U.S. 728, 731 (1948).

See *Schaeffer* v. *Leone*, Dkt. No. 34493 (2d Cir. May 24, 1971). The application for a writ of habeas corpus is without merit and is therefore denied. So ORDERED.

Dated at Hartford, Connecticut, this 14th day of July, 1971.

T. EMMETT CLARIE
United States District Judge

JUDGMENT

This case came on for consideration on a Petition for a Writ of Habeas Corpus, and the Court having entered its Ruling under date of July 15, 1971, denying the said petition,

It is accordingly ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the respondent, dismissing the petition for a writ of habeas corpus.

Dated at New Haven, Connecticut, this 23rd day of July, 1971.

(s) GILBERT C. EARL
Clerk, United States District Court
By:
(s) ILLEGIBLE
ILLEGIBLE
Deputy-in-Charge

CERTIFICATE OF PROBABLE CAUSE

This Courtdenied the application of the petitioner for a writ of habeas corpus on July 14, 1971. An appeal from said decision was filed with this Court on July 23, 1971.

The detention complained of in said application arose out of process issued by the Connecticut State Court. Pursuant to the provisions of 28 U.S.C. § 2253, this Court is of the opinion that substantial legal issues have been raised in said petition and accordingly issues a certificate of probable cause as required by law. So ORDERED.

Dated at Hartford, Connecticut, this 26th day of July, 1971.

T. EMMETT CLARIE
United States District Judge